

ANALYSIS

This ordinance amends the proprietary petroleum pipeline franchise granted by Ordinance No. 2008-0066F to Freeport-McMoRan Oil & Gas LLC, a Delaware limited liability company ("Freeport-McMoRan"), to reflect a transfer of the franchise rights from Freeport-McMoRan to E&B Natural Resources Management Corporation, a Delaware corporation; extend the term of the franchise for fifteen (15) years, through February 28, 2034; impose testing and reporting requirements pertaining to static, abandoned, idle, inactive, and out-of-service pipelines in compliance with applicable federal, State, and local pipeline laws; and make other minor revisions to clarify certain terms and conditions of the franchise.

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Requested: 11/08/18
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ORDINANCE NO. _____

An ordinance amending Ordinance No. 2008-0066F, a proprietary petroleum pipeline franchise granted to Freeport-McMoRan Oil & Gas LLC, a Delaware limited liability company, to reflect a transfer of the franchise rights to E&B Natural Resources Management Corporation, a Delaware corporation, and to extend the term of the franchise for fifteen (15) years.

The Board of Supervisors of the County of Los Angeles ordains as follows:

SECTION 1. Section 1 of Ordinance No. 2008-0066F, as amended, is hereby amended to read as follows:

Section 1. Franchise Term, Grant.

The right, privilege, and franchise is granted to ~~Freeport-McMoRan Oil & Gas LLC, a Delaware limited liability company~~E&B Natural Resources Management Corporation, a Delaware corporation ("Franchisee"), and its successors and assigns, for an additional period of fifteen (15) years, through February 28, 2049~~34~~, to lay, construct, reconstruct, maintain, operate, renew, repair, change the size of, remove, or abandon in place, pipes and pipelines for the collection, transportation, or distribution of petroleum, oil, gas, gasoline, or other liquid hydrocarbon products, wet gas, industrial gas, chemicals, mud, steam, water, waste water, and other liquid substances, excluding any hazardous substances or hazardous waste within the meaning of the "Comprehensive Environmental Response Compensation and Liability Act of 1980," 42 U.S.C. section 9601 et seq., and amendments thereto, together with all manholes, valves, cathodic protection systems, appurtenances, and connections necessary or appropriate for the

operation of said pipes or pipelines, including poles, conduits, wires, cables, including adjunct communications lines, and other appurtenances and equipment for telegraph or telephone lines, or both, necessary or appropriate solely for the Franchisee's operations, in, under, along, or across any and all highways, as defined in Section 16.36.080 of the Los Angeles County Code, now or hereafter dedicated to public use within the following described franchise area within the unincorporated territory of the County of Los Angeles ("County"), State of California, and depicted on the exhibit map attached hereto:

. . .

SECTION 2. Section 2 of Ordinance No. 2008-0066F, as amended, is hereby amended to read as follows:

Section 2. Consideration; Payment of Fees.

A. As consideration for ~~the~~a franchise granted or extended, ~~the Franchisee~~ shall pay the County's ~~Chief Executive Office ("CEO")~~Director of the Department of Public Works ("Director") a ~~one-time granting fee~~ of five thousand dollars (\$5,000) within thirty (30) days after the adoption of this ordinance.

. . .

G. In addition to the foregoing annual franchise fee, ~~the Franchisee~~ shall also pay:

1. The County Department of Public Works, ~~Construction~~Land Development Division, Encroachment Permits & Inspection Section, within sixty (60) days after the end of each calendar year, for each year of the life of the franchise, an

initial construction charge calculated at a rate of one hundred dollars (\$100) per mile, or fraction thereof, for all new main lines laid during that preceding calendar year.

. . .

SECTION 3. Section 3 of Ordinance No. 2008-0066F, as amended, is hereby amended to read as follows:

Section 3. Reports.

~~The Franchisee shall during the life of the franchise:~~

A. File with the County Auditor-Controller and the ~~GEO, Director of Real Estate~~, on or before the fee payment date, with one copy to each, a report, verified under oath by a duly authorized representative of ~~the Franchisee~~, showing as of December 31 of the immediately preceding calendar year ("franchise report period"), the length of ~~the Franchisee's~~ main lines in highways, the nominal internal diameter of such main lines, the "rate per foot per year," defined as the amount payable per lineal foot per year under Section 2, and the computation of the total amount of the annual franchise fee due to the County, together with such data as is necessary in the opinion of the County Auditor-Controller and/or the ~~GEO, Director of Real Estate~~, to calculate or verify the calculation of the annual franchise fee as required by Section 2.

B. Show, ~~in~~ the report prepared pursuant to subsection 3.A above, ~~Franchisee shall also show:~~ any change in franchise footage since the end of the most recent franchise report period, ~~if any~~, segregating such footage as to new main lines laid, old main lines removed, old main lines abandoned in place, including the internal diameter of such main lines laid, removed, and/or abandoned in place; the footage of

new conduits laid for wires, cables, telegraph, or telephone lines, old conduits removed, old conduits abandoned in place; the diameter of such conduits laid, removed, and/or abandoned in place; and the footage and internal diameter of main lines in territory annexed or incorporated since the last day of the most recent franchise report period; and.

C. ~~File with the Director of the County Department of Public Works and the~~
~~CEO, Director of Real Estate,~~ on or before the fee payment date, with one copy to each, a report showing the permit number of each permit obtained for the installation of new main lines and conduits during the most recently completed franchise report period, together with the length and size of such main lines and conduits.

D. Within one (1) year of the operative date of this ordinance:

1. Prepare and submit to the County procedures and a schedule ("Procedures") for conducting routine and as-needed safety inspections and integrity testing ("Testing") of Franchisee's static, abandoned, idle, inactive and out-of-service pipelines ("Inactive Pipelines") in compliance with all applicable federal, State, and local pipeline laws and regulations and the Los Angeles County Code ("Pipeline Laws").

2. Perform Testing through an independent third-party testing company, with oversight by appropriate agencies, or as may otherwise be requested by Franchisee and approved by the County, in compliance with the Pipeline Laws.

3. Provide evidence satisfactory to the County that each Inactive Pipeline, in compliance with the Pipeline Laws, has either: (1) undergone required Testing and been approved for active use, or (2) been removed or abandoned in place.

E. Comply with the Pipeline Laws, including but not limited to those pertaining to Testing, operating and maintenance of all of Franchisee's pipelines that are in active use or have been abandoned, throughout the term of the franchise.

SECTION 4. Section 5 of Ordinance No. 2008-0066F, as amended, is hereby amended to read as follows:

Section 5. Indemnification, Insurance, and Bonding.

Franchisee shall meet the following indemnification, insurance, and bonding requirements:

...

C. Without limiting Franchisee's indemnification of the County or the County's agents, Franchisee shall provide and maintain at its own expense, during the term of this franchise, the following programs of insurance. Such programs and evidence of insurance shall be satisfactory to the County, and shall be primary to, and not contributing with, any other insurance or self-insurance programs maintained by the County.

1. Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered on or before the effective date of this franchise, and on or before the expiration date of each term of insurance, to the ~~Chief Executive Office, Real Estate Division, Attn: Property Management Section, 222 South Hill Street, Third Floor,~~

~~Los Angeles, California 90012~~Director, Attn: Survey/Mapping & Property Management Division, 900 South Fremont Avenue, Alhambra, California 91803, or such other address(es) as Franchisee may be directed in writing by the ~~CEO~~Director to use. Such certificates or other evidence shall:

. . .

d. Include a copy of the additional insured endorsement to the commercial general liability policy, adding the County and the County's agents as additional insureds for all activities arising from this franchise; and

. . .

D. Franchisee shall furnish the ~~CEO, Real Estate Division~~Director, at the location specified in ~~S~~subsection 5.C.1, within thirty (30) days of the adoption of this ordinance, and within thirty (30) days of the expiration date of each term of insurance, either certified copies of the policies required by ~~S~~subsection 5.C or a certificate of insurance for each of said policies executed by ~~the~~ Franchisee's insurance agent, or by the company issuing the policy, certifying that the policy is in force.

E. As an alternative to commercial insurance from Franchisee, the County may consider and approve, at the County's sole option, Franchisee's use of a program of self-insurance or self-insured retention, upon review and approval of the following:

. . .

2. A formal declaration by Franchisee to be self-insured for the type and amount of coverage indicated in this ordinance. This can be in the form of a corporate resolution or a certified statement from an authorized principal of ~~the~~

Franchisee. Franchisee must notify the ~~CEO, Real Estate Division~~Director, at the location specified in subsection 5.C.1, immediately of discontinuation or substantial change in the self-insurance or self-insured retention program.

3. An agreement to notify the ~~CEO~~Director immediately of any claim, judgment, settlement, award, verdict, or change in Franchisee's financial condition ~~which~~that would have a significant negative effect on the protection that the self-insurance or self-insured retention program provides to the County.

...

5. Upon request by ~~CEO~~the Director, an audited financial statement that gives evidence of Franchisee's capacity to respond to claims falling within the self-insurance or self-retention program. Resubmission of such a statement may be required annually for the duration of the franchise, or more frequently at the request of the ~~CEO~~Director.

...

F. Within thirty (30) days following the adoption of this ordinance, Franchisee shall provide to the ~~CEO~~Director, at the location specified in subsection 5.C.1, a faithful performance bond in the sum of not less than fifty thousand dollars (\$50,000) payable to the County of Los Angeles and executed by a corporate surety, acceptable to the County and licensed to transact business as a surety in the State of California. Such bond shall be conditioned upon the faithful performance by ~~the~~ Franchisee of the terms and conditions of this franchise and shall provide that, in case of ~~any~~the breach of any condition of this franchise, the whole amount of the penal sum of fifty thousand dollars

(\$50,000), or any portion thereof, shall be deemed to be liquidated damages, and shall be immediately payable to the County by the principal and surety(ies) of the bond.

. . .

2. The faithful performance bond shall continue to exist for one (1) year following the ~~CEO's~~Director's approval of any sale, transfer, assignment, or other change of ownership of the franchise, or following the expiration or termination of the franchise. The ~~CEO~~Director may release said bond prior to the end of the one (1) year period upon satisfaction by Franchisee of all the obligations under the franchise.

. . .

SECTION 5. Section 6 of Ordinance No, 2008-0066F, as amended, is hereby amended to read as follows:

Section 6. Transfers and Assignments.

A. Franchisee shall not sell, transfer, assign, lease, hypothecate, place in trust, or change the control of the franchise or any part thereof (each of which is hereinafter referred to as an "assignment"), to any other person or entity ("transferee"), except with the written consent of the ~~CEO~~Director, and after payment of a transfer fee as detailed in ~~S~~subsection 6.G. As used in this section, "transfer" includes stock transfer, and "control" includes actual working control in whatever manner exercised.

B. Franchisee shall give notice to the ~~CEO~~Director of any pending assignment, except as excluded in ~~S~~subsection 6.E, and shall provide all documents requested by the ~~CEO~~Director, as set forth in ~~S~~subsection 6.F, on which the assignment is predicated. Consent to any such assignment shall only be refused if the ~~CEO~~Director

finds that Franchisee is in noncompliance with the terms and conditions of the franchise and/or that the proposed transferee, as applicable, is lacking in experience and/or financial ability to meet the franchise obligations. Consent from the CEODirector shall be conditioned upon the terms and conditions set forth in the assignment documents delivered to the County, the assumption by the transferee, as applicable, of all the Franchisee's covenants and obligations under the franchise, and all information provided to the CEODirector under §subsection 6.F, below, being true and correct as of the time of submittal to the CEODirector. Upon receipt of such consent from the CEODirector, Franchisee may proceed to consummate the assignment.

C. Franchisee shall file with the CEODirector within thirty (30) days after the effective date of any assignment, a certified copy of the duly-executed instrument(s) ~~which~~that officially evidence(s) such assignment. If Franchisee fails to file such duly-executed instrument(s) is not filed with the CEODirector within thirty (30) days after the effective date of such proposed assignment, or if the conditions to consent by the CEODirector have not been met, then the CEODirector may notify the Franchisee and the proposed transferee that the assignment is not deemed approved by the County. The CEODirector may then administratively determine that the assignment has no force or effect, or that the franchise is forfeited. If it is determined that the franchise is forfeited, and the Board of Supervisors may repeal this franchise.

D. As a condition to granting consent to such assignment, the County may impose such additional terms and conditions upon this franchise and upon the proposed transferee whichas the CEODirector recommends or the Board deems to be in the

public interest. Such additional terms and conditions shall be expressed by ordinance. Nothing contained herein shall be construed to grant Franchisee the right to complete an assignment, except in the manner aforesaid. This section applies to any assignment, whether by operation of law, by voluntary act of Franchisee, or otherwise.

...

F. Upon notice by Franchisee of any pending assignment, the proposed transferee shall submit an assignment application to the CEO Director, which shall contain at a minimum:

...

2. A current financial statement, which has been audited by a certified public accountant demonstrating conclusively to the satisfaction of the CEO Director that the proposed transferee has all of the financial resources necessary to carry out all of the terms and conditions of the franchise. The financial statement shall include a balance sheet, profit and loss statement for at least the three (3) most recent years, and a statement of changes in financial position; however, if the proposed transferee has been in existence for less than three (3) years, then for such period of existence;

...

4. Other information ~~which~~that may be required by the CEO Director to assess the capability of the proposed transferee to operate and maintain the franchise.

G. The transfer fee shall be submitted with ~~the~~ Franchisee's request for the County's consent to any assignment described in ~~S~~subsection 6.A and shall be determined as follows:

. . .

3. In the event that the County's actual costs to process the proposed assignment application, including any consultant's fees incurred by the County to assist in evaluating the application, exceed the fees detailed above, ~~the Franchisee and the~~ proposed transferee may be required to pay any additional costs incurred by the County in processing the ~~Franchisee's and/or proposed transferee's~~ request for assignment. Such costs shall be paid by ~~the Franchisee and the proposed transferee, or either,~~ prior to final consideration of the request by the ~~CEO~~Director or the Board, as applicable.

SECTION 6. Section 9 of Ordinance No. 2008-0066F, as amended, is hereby amended to read as follows:

Section 9. Franchise Operative Date.

The operative date of this franchise shall be March 1, 200919.

SECTION 7. Section 10 of Ordinance No. 2008-0066F, as amended, is hereby added to read as follows:

Section 10. Termination.

If Franchisee fails to comply with any of the requirements of the franchise, the County may, in its sole discretion, terminate the franchise and/or seek any and all available remedies at law or in equity.

[EBNRMFRANGCCC].